STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 99-928

June 2, 2000

CENTRAL MAINE POWER COMPANY
Petition for Disclaimer of Jurisdiction
Or Alternative Request for Approval
Of Sale of Vermont Yankee Nuclear
Power Plant

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

On December 22, 1999, Central Maine Power Company (CMP) filed a petition asking the Commission to "disclaim jurisdiction" over the sale of the 540 MW nuclear power plant and related transmission facilities that are owned by the Vermont Yankee Nuclear Power Corporation (Vermont Yankee), of which CMP is a 4% share owner. Alternatively, if the Commission determines that it has jurisdiction over the sale, CMP asks that the Commission approve the sale of the Vermont Yankee power plant. We decide that Maine Commission approval is not necessary for either of the two transactions described by CMP: the sale by Vermont Yankee Nuclear Power Corporation of the nuclear power plant owned by the corporation, or the 1999 Amendatory Agreement to the Power Purchase Agreement between Vermont Yankee Nuclear Power Corporation and CMP.

II. BACKGROUND

CMP and a number of other electric utilities in New England formed Vermont Yankee as a separate corporate entity in 1966 as part of a joint effort to build and operate a nuclear power plant in Vernon, Vermont. Construction of the plant began in 1967, and the plant entered commercial operation on November 30, 1972. The operating license for the plant, issued by the Nuclear Regulatory Commission, currently expires on March 21, 2012.

CMP owns 4% of the common stock of Vermont Yankee and is entitled to a corresponding share of the nominal capacity and related energy output of the Vermont Yankee plant. The precise terms and conditions of CMP's entitlement to the plant's output are set forth in two agreements. The first agreement is the Power Contract dated February 1, 1968, as it has been amended from time to time, which covers the initial 30-years of operation of the plant (expiring on November 30, 2002). The second agreement, the Additional Power Contract dated February 1, 1984, covers CMP's entitlement to the output of the plant after November 30, 2002.[1]

[1] In the period prior to 2002, CMP resells approximately 10% of its entitlement to the output of the Vermont Yankee power plant to certain municipal utilities pursuant to

During 1999, Vermont Yankee explored with several companies the potential sale of the Vermont Yankee power plant and engaged in negotiations with two companies. The Vermont Yankee board of directors determined that an offer to purchase the nuclear power plant submitted by AmerGen Energy Company, L.L.C. (AmerGen) would provide significant benefits and recommended approval of the sale to its stockholders. The terms of the power plant sale were formally approved by Vermont Yankee's stockholders at a meeting held on November 2, 1999.

The terms of the sale of the power plant to AmerGen are set forth in a number of related agreements. The nuclear power plant itself will be sold to AmerGen pursuant to an Asset Purchase Agreement (APA) for an adjusted purchase price estimated by Vermont Yankee to be $23.5 million (assuming the proposed sale closes by July 1, 2000). With certain limited exceptions, AmerGen will assume essentially all of Vermont Yankee's liabilities associated with the plant's operation, including the responsibility of decommissioning the plant. In this regard, the assets transferred to AmerGen under the APA include the decommissioning trust funds currently maintained by Vermont Yankee, plus an additional sum to be paid by Vermont Yankee to bring the funds available for decommissioning plant to an agreed-upon level. AmerGen will be responsible for any additional funds that may prove necessary to decommission the plant.

Concurrently with the sale of the nuclear power plant, Vermont Yankee will enter into a new Power Purchase Agreement (PPA) with AmerGen to purchase 61.5% of the plant's output at a fixed price on a unit-contingent basis. Vermont Yankee will resell the energy it purchases from AmerGen to four owners of Vermont Yankee, including CMP, who have elected to continue purchasing their proportionate entitlements to power from the plant pursuant to amendments (the 1999 Amendatory Agreements) to the respective Power Contracts and Additional Power Contracts between each shareowner and Vermont Yankee. The other five shareowners of Vermont Yankee have elected to exercise an option under the 1999 Amendatory Agreements to terminate the purchase of energy from the plant, in return for making cash buy-out payments to AmerGen (indirectly through Vermont Yankee).

CMP asserts that the transactions involving Vermont Yankee do not require regulatory approval under Maine law. In order to provide the legal assurances necessary to facilitate the financial closing of the proposed Vermont Yankee sale, however, CMP seeks a formal Commission ruling disclaiming jurisdiction over the Vermont Yankee transactions. CMP states that the relevant Maine statute is 35-A M.R.S.A. § 1101, which normally governs the sale of utility property and requires prior Commission approval of such sales. The Vermont Yankee transactions do not require Commission approval under section 1101, in CMP's view, because: 1) as a result of electric industry restructuring, the Vermont Yankee Power Plant is no longer "necessary or useful" and therefore not covered by section 1101; 2) disposition of generating assets

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secondary purchase agreements. Accordingly, before 2002, CMP is contractually entitled to only 3.5909 % rather than 4% of the plant's output.

do not materially affect CMP's ability to perform its duties to the public as a transmission and distribution utility; and 3) the sale of the power plant will be made by the Vermont Yankee Nuclear Power Corporation over which the Commission has no jurisdiction.

III. DECISION

We agree with CMP that because 35-A M.R.S.A. § 1101 only applies to property that is necessary or useful, section 1101 does not apply to the sale of the Vermont Yankee nuclear power plant. A transmission and distribution (T&D) utility generally cannot use generation assets in performing the utility's duties to the public.[2]

Section 1101, however, is not the only section within Title 35-A that must be examined in order to determine whether the Commission must approve or review the transactions involving Vermont Yankee. We must examine the transactions in light of the Electric Restructuring Act (35-A M.R.S.A., Chapter 32) and related-amendments to Title 35-A necessitated by the fundamental change in the electric utility industry effective March 1, 2000. The Restructuring Act prohibits a T&D utility from even owning a generation asset such as a nuclear power plant or a purchase power agreement, with very limited exceptions. Prior to March 1, 2000, electric utilities were required to divest their generation assets.[3] Divestiture of generation assets must be accomplished pursuant to a divestiture plan that has been approved by the Commission. 35-A M.R.S.A. § 3204.

CMP does not have to divest its Vermont Yankee ownership because ownership interest in a nuclear power plant is one of the limited exceptions to the divestiture requirement. 35-A M.R.S.A. § 3204(1)(B). Although CMP is not required to divest ownership interest in a nuclear power plant, we have previously held in this docket that if CMP does divest its ownership interest in a nuclear power plant, that it must do so pursuant to a divestiture plan that is approved by the Commission. *Central Maine Power Company*, No. 99-928 (February 24, 2000) (approving an amendment to CMP's divestiture plan authorizing the sale and transfer of its share of the Millstone 3 nuclear power plant to Northeast Utilities).

However, in the transaction described by CMP, CMP will not divest its ownership interest in the nuclear power plant. CMP's ownership in the nuclear power plant is evidenced by its 4% share of the stock of Vermont Yankee Corporation. CMP will retain its stock ownership. The Vermont Yankee Nuclear Power Corporation is not a utility subject to regulation by the Maine Commission, nor is Vermont Yankee indirectly

[2] Section 3204(1)(D) permits a T&D utility to own and use a generation asset "to perform its obligations as a transmission and distribution utility in an efficient manner[,]" for instance, as voltage support.

[3] 35-A M.R.S.A. § 3204(4) authorizes the Commission to extend the deadline for divesting some generation assets.

subject to regulation as an affiliate of CMP, and therefore the Vermont Yankee Corporation's disposition of the nuclear power plant does not require any action by this Commission.[4]

CMP's ownership interest in the nuclear power plant also includes its Purchase Power Agreement with Vermont Yankee Corporation. Although CMP has agreed to change the terms of that agreement, CMP will not divest the contract. The Restructuring Act does not require Commission approval of generation contract amendments. The Restructuring Act does, however, require CMP to make any such amendments in a manner that fulfills CMP's requirement to mitigate its stranded costs. See 35-A M.R.S.A. §§ 3204(4) and 3208(4). We will review the reasonableness of CMP's mitigation effort in our next investigation of CMP's stranded costs. [5]

CMP also asserts that approval requirements contained in 35-A M.R.S.A. §§ 3133 and 3133-A may be implicated by the 1999 Amendatory Agreement. CMP asserts that approval is not required under sections 3133 and 3133-A because the original PPA was not originally subject to Commission approval and therefore amendments or extensions of such agreements are also not subject to approval. 35-A M.R.S.A. §§ 3133(10)(A) and 3133-A(5-A). Rather, CMP must only inform the Commission of such amendments or extensions to a Purchase Power Agreement in which the original Purchase Power Agreement was not subject to the approval of the Commission.

We agree with CMP that sections 3133 and 3133-A do not require Commission approval for CMP to enter into the 1999 Amendatory Agreement, although for different reasons. With the March 1, 2000 effective date for retail access, sections 3133 and

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[4] We note that CMP's minority ownership interest in another corporation may be sufficient, in some instances, for us to conclude that the corporation's divestiture of a generation asset must be accomplished by a Commission-approved CMP divestiture plan. We do not decide whether a 10% (the affiliated transaction threshold) is sufficient or whether any other interest less than 50% is sufficient. In the present case, we simply decide that a 4% interest is not sufficient for us to conclude that the Restructuring Act should require CMP to obtain Maine Commission approval as to Vermont Yankee's plan to divest Vermont Yankee's nuclear power plant. Even though approval is not necessary, the Maine Commission may review Vermont Yankee's actions in the context of setting CMP's rates. For instance, in the next stranded cost investigation, an issue may be raised whether Vermont Yankee's actions were reasonable or prudent, and whether any unreasonableness or imprudence by Vermont Yankee can or should be imputed to CMP.

[5] In our first Order in Phase II of CMP's restructuring rate case, we ordered CMP to defer the difference between the stranded costs calculated with Vermont Yankee owning the nuclear power plant (rates effective March 1, 2000 were set assuming Vermont Yankee would continue to own the nuclear plant) and stranded costs when Vermont sells the nuclear power plant. *Central Maine Power Company*, No. 97-580 (Phase II) (Jan. 19, 2000).

3133-A have been amended to conform to the deregulation of generation. Sections 3133 and 3133-A now only apply to the purchase of transmission capacity or to entering into significant agreements with respect to supplying, purchasing or exchanging transmission capacity. The statutory requirements concerning building generation plants or purchasing generation service have been eliminated.

Thus, for the most part, generation-related contracts are no longer permitted. CMP's PPA with Vermont Yankee falls within the nuclear power exception of the generation divestiture requirement. While the statute imposes an obligation on CMP to reasonably mitigate the cost of such contracts, the statute does not require the Commission to approve amendments or restructuring of such contracts.

Accordingly, the Commission concurs with Central Maine Power Company that the sale by Vermont Yankee Nuclear Power Corporation of the nuclear power plant located in Vernon, Vermont and that the 1999 Amendatory Agreement between CMP and Vermont Yankee Atomic Power Corporation, do not require approval or review by the Maine Public Utilities Commission.

Dated at Augusta, Maine, this 2nd day of June, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.